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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,317	06/19/2006	Bodo W. Lambertz	DD-26009	5864
2387 7590 04/30/2009 Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606				
EXAMINER				
HOEY, ALISSA L				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
04/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,317

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Alissa L. Hoey

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/30/09 has been entered.

Claim Objections

2. Claim 2 is objected to because of the following informalities: the pads of claim 2 are the absorption pads of claim 1, why does claim 2 present these pads as additional/new pads? Appropriate correction is required.
3. Claim 4 is objected to because of the following informalities: there is no antecedent basis for "the spacer pads" of claim 4. Appropriate correction is required.
4. Claim 11 is objected to because of the following informalities: how can the pads of claim 1 enclose the area of the ankle when the pads of independent claim 1 are the absorption pads disposed where a shoe tongue would be?. Appropriate correction is required.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the heel pad on the

sock and shoe of claim 16 must not overlap and provide double padding must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tongue pads of shoe and sock of claims 1 and 17 providing a continuous uniformly padded surface, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the continuous uniformly padded surface, which avoids double padding of claim 20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 15, 16, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Beck (US 2005/0066544)(note PCT to Beck: PCT/KR03/00655 was published in English and designated the US).

Beck teaches the following:

15. (Previously Presented) A sock according to Claim 16, characterized in that the spacer pads (10) protrude beyond the web (A).

16. (Currently Amended) A sock (A), especially for use in athletic activities, and to be worn in a shoe (60) having at least one pad therein (see figure 3), said one pad being in the heel area of the shoe (figures 3, identifier 50). said sock (A) having padding (10) in some area (Figure 1 and 2), said sock having a foot portion and a shaft portion, the foot portion having a toe area, a heel area and a tread area between the toe area and the heel area of the sock (paragraph 0001: figures 4a-4e), and pads (10) on the sock, characterized in that the arrangement of pads on the sock (A) are coordinated with the arrangement of the pad in the heel area of the shoe (60), the pads (10) comprise spacer pads (10), with a web (A) there between (figures 1 and 2), the spacer pads (10, 10) being disposed adjacent the pad (50) of the shoe and on opposite sides of the pad of the shoe (60) whereby the pad of the shoe (3) cooperates with the web (28) to avoid double padding and provide a continuous uniformly padded surface for providing a uniform load distribution when the sock is worn (see figure 5).

19. (New) A sock as in claim 16 wherein the web (28) has little or no padding (see figures 1 and 2, identifier A).

20. (New) A sock for use in athletic activities, and to be worn in a shoe having at least one pad (10) therein, said sock having a foot portion and a shaft portion, the foot portion having a toe area, a heel area and a tread area between the toe area and the heel area, and pads (10) on the sock (A), characterized in that the arrangement of pads (10) on the sock (A) is coordinated with the arrangement of the pad (50) in the shoe

(60), the pads (10) comprise a pair of pads with an area there between having little or no padding, the pads (10) being disposed adjacent and on opposite sides of the pad (50) of the shoe (60), with the pad of the shoe disposed in the area having little or no padding between the pair of pads (figures 1 and 2, identifier A), whereby the pad of the shoe (50) cooperates with the area between the pair of pads (10) on the sock (A) and provides a continuous uniformly padded surface, which avoids double padding (figure 5).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 2, 3, 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brother et al. (US 6,234,988) in view of Applicant's Specification (paragraph 0007).

In regard to claim 1, Brother et al. teaches a sock, especially for use in athletic activities, and to be worn in a shoe (26) having at least one pad therein, said sock having a foot portion and a shaft portion, the foot portion having a toe area, a heel area and a tread area between the toe area and the heel area, and pads on the sock (figure 1 and 3), the pads comprise absorption pads (12, 13, 14, 15), with a web there between (18), the pads being disposed adjacent to the tongue of a shoe on opposite sides of the

tongue of the shoe (12, 13), whereby the tongue of the shoe (figure 2) cooperates with the web (18) and provides a continuous uniform surface which avoids double padding (figures 2 and 3).

However, Brother et al. fails to teach the tongue of the shoe having padding.

Applicant's specification teaches padding on modern athletic shoes at the tongue portion (see paragraph 0007).

Therefore the arrangement of pads on the sock of Brother et al. would coordinate with the arrangement of the pad in the shoe of Applicant's specification (see figure 2).

It would have been obvious to have provided the padded sock of Brother et al. with the athletic shoe having padding of Applicant's disclosure, since the sock of Brother et al. worn with a shoe having padding would provide further protection and comfort to the user during use of the shoe.

In regard to claim 2, Brother et al. teaches pads in the area of the instep are formed by absorption pads between which a web is provided (18).

In regard to claim 3, Brother et al. teaches the absorption pads protruding beyond the web (see figures 1-3).

In regard to claim 11, Brother et al. teaches additional pads designed as a ring-shaped pad enclosing a surface in the area of the ankle (see figures 1 and 3, identifiers 14, 15).

In regard to claim 18, Brother et al. teaches wherein the web has little or no padding (see figures 1 and 3, identifiers 18, 12,13).

12. Claims 8, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brother et al. and Applicant's Specification as applied to claims 1 and 3 above, and further in view of Lambertz (US 6,286,151).

However, Brother et al. and Applicant's Specification fails to teach the pads being made of hollow chamber fibers covered with spun wool or cotton or an air channel in the sock.

In regard to claims 8 and 9, Lambertz teaches the pads are made of hollow chamber fibers covered with spun wool or cotton (see figures).

In regard to claim 13, Lambertz teaches an air channel in the sock (see figures).

It would have been obvious to have provided the sock having pads of Brother et al. and Applicant's Specification with the pads being made of hollow chamber fibers covered with spun wool or cotton of Lambertz, since the sock of Brother et al. and Applicant's Specification provided with the hollow chamber fibers covered with spun wool or cotton pads would provide a sock with padding that is effective to dampen shock and pressure.

13. Claims 1 and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Throneburg et al. (US 5,307,522) in view of Brother et al. (US 6,234,988) and Applicant's Specification (paragraph 0007).

In regard to claim 1, Throneburg et al. teaches a sock especially for use in athletic activities, and to be worn in a shoe having at least one pad therein (see figure 1). The sock having a foot portion and a shaft portion, the foot portion having a toe area,

a heel area and a thread area between a toe area and the heel area and pads (12, 13) of the sock (figure 1). The pads comprise absorption pads with a web there between (see figure 1, identifiers 12, 13 and 19).

However, Throneburg et al. fails to teach the pads being in alignment with a tongue section of a shoe.

Brother et al. teaches a sock having pads in alignment with a tongue section of a shoe (see figures 1-3, identifiers 12, 13).

Brother and Throneburg et al. fail to teach the shoe having a pad in the tongue portion.

Applicant's specification teaches modern athletic shoes having a pad in the tongue portion (see paragraph 0007).

It would have been obvious to have provided the sock with pads of Throneburg et al. with the tongue corresponding pads of Brother et al. and the tongue pad of Applicant's specification, since the sock of Throneburg et al. provided with additional padding corresponding to the tongue padded portion of the shoe would provide for a shoe and sock system providing greater protection and comfort to the user's feet during use.

In regard to claim 4, Throneburg teaches pads (12, 13) in the area of the heel are formed by the spacer pads with a web (19) being provided between them (see figure 1).

In regard to claim 5, Throneburg teaches the spacer pads (12, 13) protruding beyond the web (19).

In regard to claims 6 and 7, Throneburg teaches the web (19) is made of a climate regulating knit fabric (column 3, lines 61-68 through column 4, lines 1-5).

With respect to the web being woven, it would have been obvious to have provided the web being woven of knitted as desired, since both are well known ways of manufacturing materials for garment articles.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Throneburg et al., Brother et al. and Applicant's Specification as applied to claim 1, 4 and 5 above, and further in view of Lambertz (US 6,286,151).

However, Throneburg et al., Brother et al. and Applicant's Specification fails to teach the pads being made of hollow chamber fibers covered with spun wool or cotton.

In regard to claim 10, Lambertz teaches the pads are made of hollow chamber fibers covered with spun wool or cotton (see figures).

It would have been obvious to have provided the sock and shoe having pads of Throneburg et al., Brother et al. and Applicant's Specification with the pads being made of hollow chamber fibers covered with spun wool or cotton of Lambertz, since the sock of Throneburg et al., Brother et al. and Applicant's Specification provided with hollow chamber fibers covered with spun wool or cotton pads would provide a sock with padding that is effective to dampen shock and pressure.

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Throneburg et al. (US 5,307,522) in view of Applicant's Specification (paragraph 0007).

In regard to claim 16, Throneburg et al. teaches a sock, especially for use in athletic activities (figure 1), and to be worn in a shoe having at least one pad therein, said sock having padding in some area, said sock having a foot portion and a shaft portion, the foot portion having a toe area, a heel area and a tread area between the toe area and the heel area of the sock (figure 1), and pads on the sock (12, 13), characterized in that the arrangement of pads (12, 13) on the sock comprise spacer pads (12, 13), with a web (19) there between, the spacer pads (12, 13) capable of being disposed adjacent the pad of the shoe and on opposite sides of the pad of the shoe, whereby the pad of the shoe is capable of cooperating with the web (19) to avoid double padding and provide a continuous uniformly padded surface for providing a uniform load distribution when the sock is worn.

However, Throneburg et al. fails to teach a shoe with heel padding.

Applicant's specification teaches shoe with heel padding (paragraph 0007). The shoe of Applicant's specification worn with the sock of Throneburg would provide a shoe having at least one pad therein, said one pad being in the heel area of the shoe, characterized in that the arrangement of pads (12, 13) on the sock is coordinated with the arrangement of the pad in the heel area of the shoe (paragraph 0007).

It would have been obvious to have provided the sock with pads of Throneburg et al. with the shoe having heel pad of Applicant's specification, since the sock of Throneburg et al. worn with a heel padded shoe, would provide a shoe and sock system that provides comfort and protection to the user's foot during use.

16. Claims 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Throneburg et al. and Applicant's Specification as applied to claim 16 above, and further in view of Brother et al. (US 6,234,988).

Further, Applicants Specification teaches padding in the shoe at the tongue portion (see paragraph 0007).

Throneburg et al. and Applicant's Specification fails to teach pads located on the upper part of the sock that corresponds with a padded shoe tongue.

Brother et al. teaches a sock article with pads located on the upper part of the sock such that they would correspond with a tongue portion of a shoe, but not overlap (see figures 1, 2 and 3; identifiers 12 and 13).

It would have been obvious to have provided the sock with pads and shoe with pads of Throneburg et al. and Applicant's specification with the upper tongue sock pads of Brother et al., since the sock and shoe pads of Throneburg et al. and Applicant's Specification provided with upper tongue pads, would provide for a sock that provides greater protection and comfort to a user's foot during use.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765